

KA8TPDVC

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 PDV USA, INC.,

4 Plaintiff,

5 v.

20 CV 3699 (JGK)

6 INTERAMERICAN CONSULTING INC.,

7 Defendant.

8 -----x

New York, N.Y.  
October 8, 2020  
11:30 a.m.

10 Before:

11 HON. JOHN G. KOELTL,

12 District Judge

13  
14 APPEARANCES (Telephonic)

15 WILLKIE FARR & GALLAGHER LLP

Attorneys for Plaintiff

16 BY: JEFFREY KORN

PIA KEEVIL

17 HECHT PARTNERS LLP

Attorneys for Defendant

18 BY: KATHRYN LEE BOYD

19 ALAN ALVELA

20 FELDMAN & LATHAM LLP d/b/a TRAILBLAZER

Attorneys for David Rivera

21 BY: JEFFREY FELDMAN

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(Via telephone)

(Case called)

LAW CLERK: Please state your appearances, starting with the plaintiff.

MR. KORN: Thank you, this is Jeffrey Korn on behalf of PDV USA. I'm with the law firm of Willkie Farr & Gallagher. With me on the line is my colleague, Pia Keevil.

THE COURT: Good morning.

MS. BOYD: On behalf of defendant Interamerican, this is Kathryn Lee Boyd of Hecht Partners LLP. And joining me also from our firm is Alan Alvela, also of Hecht Partners.

Good morning, your Honor.

THE COURT: Good morning. So this is a breach of contract suit in which the defendant seeks to make a motion to dismiss for lack of standing and failure to state a claim. I read the letters. Several things jump out at me. The first is, having read the defendant's letter, does the plaintiff want to file an amended complaint?

It appears, just from reading the letters, that the plaintiff hasn't attached the complaint. The plaintiff says -- the plaintiff may be right -- that they don't have to attach the complaint. But if the plaintiff is alleging the violation of specific provisions in the agreement and the defendant says, "That's just not right, here's the agreement, and what you have alleged is not a violation of the specific portions of the

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1 agreement that you're citing," what will happen? Well, the  
2 likely result of that might well be that the complaint is  
3 dismissed without prejudice to repleading, and that would mean  
4 we're six months down the line and the plaintiff hasn't  
5 accomplished very much.

6 So reading the letters, it would appear that the  
7 better course of valor would be the plaintiff to file an  
8 amended complaint, attach the agreement, and plead specifically  
9 what provisions of the agreement the plaintiff alleges have  
10 been violated, as well as to make an adequate assertion of why  
11 the plaintiff has standing.

12 It's a little strange, I have to say, after reading  
13 the letters, for the plaintiff to say -- well, defendant says:  
14 Plaintiff doesn't have standing because there was an  
15 assignment. And the plaintiff responds: Yes, yes, there was  
16 an assignment, but you never thought that the assignment was  
17 valid. So the plaintiff made an assignment which the defendant  
18 has said was not valid, but the plaintiff now, having made the  
19 assignment, relies on the defendant's assertion that the  
20 assignment was not valid. Well, that's an interesting posture,  
21 to say the least.

22 My penultimate point is the defendant makes various  
23 other allegations; for example, failure to specify the damages,  
24 each of which could be cured, presumably, with an amended  
25 complaint and we could move on.

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1           My final point, though, is the plaintiff in its  
2 responsive letter provide a few more details about the  
3 contract. It was for about 90 days of consulting services for  
4 \$50 million, of which apparently \$15 million was paid to the  
5 defendant, one of whose apparent principals said he never  
6 received any of the money because it all went to the political  
7 opposition in Venezuela.

8           Those allegations raise certainly significant issues  
9 with respect to the legality, if you will, and the  
10 enforceability of the contract from the get-go, as they say.  
11 And so the allegations in the plaintiff's letter, the  
12 responsive letter, suggest an additional defense that the  
13 defendant hasn't even raised. The question becomes -- and it's  
14 an odd issue to be raised sub rosa by the plaintiff in the  
15 case. The issue becomes: Is this an enforceable contract to  
16 allegedly provide consulting services but in fact use the  
17 contract as a way of providing substantial funds to the  
18 political opposition in Venezuela?

19           As I say, it's odd in a way because the plaintiff,  
20 which is seeking damages in the case, brings it up in  
21 opposition to the motion to dismiss. It's the plaintiff who  
22 seeks to enforce and seek damages under this contract. And  
23 there are a series of troubling issues raised by the  
24 allegations, which also raises the question, while the  
25 plaintiff didn't have an obligation to include the contract as

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1 part of the complaint, one wonders why the plaintiff did not.

2 So those were my observations. At the basic level, I  
3 think it would behoove the plaintiff to file an amended  
4 complaint with the contract and make the allegations necessary  
5 to survive a motion to dismiss, if that's possible. And it  
6 certainly would behoove the parties to discuss whether they  
7 wish to proceed in court with an action for breach of this \$50  
8 million consulting agreement for 90 days. I mean it raises all  
9 sorts of issues which are just not explored in the letters.

10 So those were my observations after reading your  
11 correspondence. It was the defendant's request for a pre-motion  
12 conference to make a motion to dismiss, so it's probably  
13 appropriate for the plaintiff to respond to my comments.

14 MR. KORN: Thank you, your Honor, this is Jeff Korn on  
15 behalf of plaintiff, and I appreciate your comments.

16 I think, to answer your first and most fundamental  
17 question, we will take your counsel and provide an amended  
18 complaint that includes the contract. We will take another  
19 closer look at our allegations. We think they are clear and  
20 specific enough, but we will take the opportunity to re-review  
21 them in light of the defendant's letter and your Honor's  
22 comments. But I think that addresses at least the first of  
23 your comments.

24 The second I think has to do with the assignment  
25 points, and there we have a position from the defendants that

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1 there was never an assignment because there was no consent to  
2 it. We don't think the defense should be able to have it both  
3 ways, that we, on behalf of PDV USA --

4 THE COURT: Could I just stop you for a moment there?

5 MR. KORN: Of course, your Honor.

6 THE COURT: You say the defendant shouldn't be able to  
7 have it both ways. Of course the same thing could be said of  
8 the plaintiff. Because the plaintiff made the assignment,  
9 undoubtedly the plaintiff has represented to the defendant that  
10 the assignment was valid, despite what the defendant says. And  
11 this is not a case of judicial estoppel where a party takes one  
12 position in the litigation and the Court relies on that  
13 position and then the party reverses position, this is starting  
14 afresh in this litigation.

15 There was, undoubtedly, an assignment, which the  
16 plaintiff alleges, I assume, was a valid assignment, despite  
17 what the defendant says, but now in the litigation ignores that  
18 and says: Even though we've been asserting this was a valid  
19 assignment, never mind, even though it exists, it's invalid.  
20 That's at least a problem, which of course could be cured by  
21 simply adding the assignee as an additional plaintiff and  
22 saying it doesn't make a difference whether the assignment is  
23 valid or not, we've joined both the contracting party and the  
24 assignee.

25 Go ahead.

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1           MR. KORN: Thank you, your Honor, and I will explore  
2 whether that is a possibility here, given that the assignee is  
3 PDVSA, which is a Venezuelan company that is currently, or at  
4 least for U.S. purposes, controlled by an ad hoc board and is  
5 the ultimate parent of the plaintiff.

6           But I take your point, your Honor, we did plead that  
7 the consent that was sought in the assignment was not provided  
8 and the defendant continued to demand payment as if there had  
9 not been an assignment. So we proceeded on that basis. Again,  
10 your Honor, I will see whether there is a way to moot the issue  
11 by adding the additional assignee, if that is possible; and if  
12 not, then we'll have an issue to address on the motion to  
13 dismiss on the standing issue.

14           Then I believe your third point concerned the  
15 statements that we provided to your Honor that was reported by  
16 the press that were made by the principal of the defendants,  
17 and those are the statements that the defendant made in the  
18 press. We do not have a basis to know whether they are true or  
19 not. We took them as a concession that the defendant did  
20 not -- had no intention of providing the services for which he  
21 contracted. I agree with your Honor that it does raise some  
22 troubling issues, but those are factual issues, and we do not  
23 know whether the allegations that the defendant made to the  
24 press are accurate or inaccurate. And we provided --

25           THE COURT: Whoa, whoa. You're representing a client

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1 who entered into a consulting agreement to provide consulting  
2 services for 90 days -- contracting to pay \$50 million to the  
3 defendant for consulting services for 90 days. So putting  
4 aside what the defendant says, or one of the principals of the  
5 defendant or the founder of the defendant says about the true  
6 purpose of the contract, your client must know what the client  
7 was paying \$50 million for. And whether those alleged  
8 consulting services were true services or sham services, and  
9 whether the money that was being paid was, in fact, for, quote,  
10 "consulting services;" and if so, what truly were those  
11 services? All of which, putting aside what the defendant may  
12 say, are known to your client and will eventually have to be  
13 fleshed out if the motion to dismiss is denied. So there would  
14 be depositions under oath about what the consulting services  
15 were and why they were worth \$50 million and what your client  
16 was truly paying for.

17 Surely, I mean, just reading the letters, apparently  
18 your client paid \$15 million of the \$50 million and expected to  
19 get some services. The question is: What were those services?

20 Now the suggestion in the letter is they weren't  
21 really consulting services, they were payments to the political  
22 opposition in Venezuela. Now there are other possible  
23 suspicious uses of millions of dollars paid to a consulting  
24 firm. All of that would be established, if the motion to  
25 dismiss is not granted, through sworn testimony. And all I



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1 know is what I have read in the correspondence, the two letters  
2 that are before me.

3 The suggestion, obviously, is also that this has been  
4 a subject of inquiry from the press, and so there are likely  
5 press reports about this agreement and its purposes. But those  
6 are things that would have to be explored to find out whether  
7 the agreement itself is legal, and, if legal, what was the  
8 consideration for all of this money being paid and what was to  
9 be done. And how do you measure the, quote, "damages" if in  
10 fact there was a breach of the agreement? Not easy questions,  
11 at least on the basis of the correspondence before me, but all  
12 of that would surely be the subject of sworn testimony.

13 This is also a situation in which, at least as I  
14 understand the correspondence, the plaintiff was supposed to  
15 pay \$50 million for alleged consulting services and did in fact  
16 pay \$15 million. So the plaintiff, on the face of the  
17 correspondence, saved \$35 million. So you have partial  
18 performance, and one would have to question what the plaintiff  
19 got for \$15 million and what the plaintiff expected under the  
20 agreement to get for \$15 million. But the plaintiff did,  
21 apparently, save 35 million which was never paid.

22 Do I at least understand the allegations correctly at  
23 this point?

24 MR. KORN: I think you do, your Honor, and I think  
25 you're right that the questions that you have identified here

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1 that are raised by both the allegations in the complaint and  
2 the response from the defendant's principal and the press raise  
3 interesting questions to be explored in discovery.

4 What we have on the plaintiff's side is a Delaware  
5 corporation that entered into a contract that paid \$15 million,  
6 did not pay the other 35, and didn't get anything -- at least  
7 that is the allegation and this is what we will prove -- for  
8 the \$15 million, and certainly not what was bargained for and  
9 provided for in the contract, which was services to plaintiff's  
10 sole satisfaction. Those are issues that need to be explored  
11 in discovery.

12 THE COURT: Yes, but one at least questions the wisdom  
13 of -- and obviously, this is public, the letters are public,  
14 the press reports are public, so you have a plaintiff who  
15 entered into this contract for \$50 million but only paid \$15  
16 million, and the contract is apparently over, and the plaintiff  
17 now wants to get back the \$15 million. One wonders why, with  
18 looming sworn testimony about the details of this contract, the  
19 plaintiff doesn't simply, literally or figuratively, sigh and  
20 say that it saved \$35 million because it didn't pay the rest of  
21 the money on this contract for services that would be at least  
22 difficult to explain in sworn testimony.

23 But these are issues to be explored between counsel  
24 and their respective clients. And it's not necessarily an  
25 answer to say the client paid \$15 million and tells us that

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1 they were supposed to get consulting services and we didn't and  
2 so we filed this lawsuit. Well, one would think that after all  
3 of the allegations, a more searching conversation with the  
4 client would be useful.

5 Okay. I have been discussing all of this with  
6 plaintiff's counsel, defense counsel has been justifiably  
7 quiet, politely quiet, so I am happy to hear from defense  
8 counsel. Ms. Boyd.

9 MS. BOYD: Thank you, your Honor, this is Katherine  
10 Lee Boyd for Interamerican.

11 My understanding, as a matter of logistics, is that  
12 there will be an amendment that we can expect, and so I'm  
13 available to discuss right now timing for that. And we would  
14 just request some time to review the complaint for the pleading  
15 deficiencies that we've identified and then to maybe send a  
16 letter to the Court to request, if needed, another motion to  
17 dismiss briefing schedule as a matter of procedure.

18 As a matter of substance, on the issue of standing, I  
19 don't think that the law that we set out has been controverted  
20 or disputed in any way that standing has been stripped of the  
21 plaintiff here by --

22 THE COURT: Hold on. That may or may not be true. If  
23 in fact the assignment is invalid because it required the  
24 defendant's consent, which was never given, certainly the  
25 plaintiff could argue that the assignment was ineffective,

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1     invalid.

2             MS. BOYD:   You this true, your Honor.

3             THE COURT:   Whatever the parties' positions were  
4     outside the litigation, now they're in litigation, so was  
5     consent required and did your client not consent?

6             MS. BOYD:   Your Honor, our client did not consent to  
7     the assignment, but as a matter of law, it is our position that  
8     the assignment was made to enforce the contract. This was done  
9     after a performance term was over, had been made, and therefore  
10    standing was stripped. We put that in our letter.

11            Our position as to the performance and obligations  
12    under the contract that were prior to the assignment, those  
13    remained with and do remain with PDV USA, the party to the  
14    contract. So that's our position based on the law that we  
15    researched and cited, but I do believe that these are issues  
16    that would be further briefed by both parties in a full motion  
17    to dismiss briefing to explore the issues that your Honor  
18    raises.

19            THE COURT:   It's interesting. I'm not sure whether  
20    that could be decided on a motion to dismiss as opposed to a  
21    motion for summary judgment. I just don't know. Obviously I  
22    don't decide anything until it's briefed on the facts and the  
23    law, but it's a question. I don't know whether there are any  
24    factual issues involved in the validity of the assignment.

25            Okay, go ahead.

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1 MS. BOYD: So, your Honor, I wanted to clarify our  
2 position on the assignment, which, in our opinion, would be the  
3 subject of a 12(b)(1) motion, not a 12(b)(6) motion.

4 THE COURT: You are right, it is subject matter.

5 MS. BOYD: So that being said, the statements that  
6 were quoted in the responsive letter, they were not in the  
7 complaint, we would have to review those as to their  
8 sufficiency under the pleading requirements and how they meet  
9 the standards that we believe apply to 12(b)(6) setting forth a  
10 contractual claim.

11 So I think at this point there's really not much to be  
12 said except to wait for the amendment and then revisit, your  
13 Honor, with your indulgence, the motion to dismiss.

14 THE COURT: Yes, of course. And there won't have to  
15 be another set of letters. The defendant would be given the  
16 opportunity to file a motion to dismiss against the amended  
17 complaint without going through the premotion conference  
18 procedure.

19 Do you want to comment with respect to the substance  
20 of the agreement and any questions with respect to the legality  
21 of the agreement and what services the defendant was allegedly  
22 providing for \$50 million over 90 days?

23 MS. BOYD: Well, your Honor, on the merits, our  
24 position is that Interamerican did provide the services  
25 contracted for. If you have the contract in front of you,

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1 which I assume you will on the amended complaint, our position  
2 is that those services -- the terms for the services were met.  
3 And it was a very short contract. It was expected that there  
4 would be only three months of services provided for \$50  
5 million. And our position is that the plaintiff here failed to  
6 perform its side of the bargain and can't plead that it did  
7 fully perform, which is a requirement under New York law.

8 So regardless of what comments in the press have been  
9 made, those are outside the four corners of the contract and  
10 the complaint, and it's hard to comment on how those are even  
11 relevant to the question of legality as a matter of law.

12 THE COURT: No, tell me what services the defendant  
13 was allegedly providing for \$50 million over 90 days. What was  
14 the substance of the services that the defendant was providing?

15 MS. BOYD: These service --

16 THE COURT: Consulting services.

17 MS. BOYD: -- were consulting services.

18 THE COURT: Yes, consulting services. What does that  
19 mean?

20 MS. BOYD: Well, your Honor, it's hard for me to  
21 answer because I'm not a party to the contract, but there was  
22 certainly an agreement here under the contract that we have.

23 THE COURT: Whoa, whoa. I'm sorry, you're  
24 representing a client who entered into a contract to provide  
25 services over 90 days for \$50 million. Now if you want to tell

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1 me that you can't answer these questions because that would get  
2 into attorney-client privilege matters or work product, okay.  
3 Okay. But on its face, one would raise an eyebrow at a  
4 consulting agreement for \$50 million over 90 days without a  
5 specification of what services were being performed that would  
6 plausibly justify \$50 million over 90 days.

7 Does the contract, which will eventually be before me,  
8 plausibly detail who the consultants are who are working and  
9 what specific services they're performing for \$50 million over  
10 90 days? How many consultants are there? What are they doing  
11 that could possibly justify \$50 million? Is that laid out in  
12 the agreement?

13 MS. BOYD: Well, our position is that the terms of the  
14 agreement were agreed to and that we performed under those  
15 services, which include things like -- sorry, I'm not  
16 understanding what your Honor is getting at here.

17 THE COURT: I think it's obvious.

18 MS. BOYD: Your Honor, these parties have -- the  
19 amount of money, to me, is exorbitant, but I'm an individual.  
20 The parties here, especially the plaintiff, are billion dollar  
21 companies. So I can't comment on \$50 million for three months  
22 except that \$50,000 for three months is a lot to me. But they  
23 had a right to contract for that, and they did, and they didn't  
24 make good under their obligation to pay that \$50 million in  
25 three months, which is in the terms that the plaintiff agreed

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1 to.

2 So I agree, it will come out in discovery the contours  
3 of the meetings of the mind and the contours of the services  
4 that Interamerican provided, but as a matter of pleading, which  
5 is where we focused, we think it was woefully insufficient to  
6 meet basic plausibility standards.

7 THE COURT: Could you tell me -- again, I'm not asking  
8 you to breach any attorney-client privilege, could you tell me  
9 what the defendant did for the \$15 million?

10 MS. BOYD: He did everything that was required of him  
11 under the contract and in conversation with the plaintiffs at  
12 that time, because these were -- this was an ongoing  
13 relationship. So that is my understanding. Do I have details  
14 that I could provide the Court without waiving privilege here?  
15 No, I cannot, because I cannot testify against my client.

16 THE COURT: Okay. Is the defendant -- how many  
17 employees does the defendant have? Is that public?

18 MS. BOYD: I may speak out of school here, at least  
19 two, maybe more.

20 THE COURT: Okay.

21 MS. BOYD: But I can't answer with any specifics  
22 because I haven't explored that question on how many they have.

23 THE COURT: Okay. But that would mean, assuming that  
24 there are two, maybe more, that's something like \$7 million for  
25 consulting per individual over -- how long was the contract in



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1 existence for the 90-day term before it was allegedly breached?

2 MS. BOYD: Well, there was never notification of  
3 breach by plaintiff, so the contract lasted for 92 days. It's  
4 our position, we put it in as a matter of pleading, there's a  
5 waiver here because dissatisfaction was never noticed to us.

6 And your Honor, just looking at the complaint itself,  
7 there are allegations that reports were submitted which was  
8 detailing the services being provided. Those reports did not  
9 have to be in writing, per the contract. Those were done. And  
10 the complaint also states that high-level individuals and  
11 officials were met by defendant during the term of the  
12 contract. So just looking at the complaint itself, as we've  
13 stated in our letter, it concedes that services were provided  
14 under the contract. There's no breach.

15 THE COURT: Yeah, well --

16 MS. BOYD: Not pleaded, at least.

17 THE COURT: That's, of course, the other more  
18 questionable interpretation of the contract. To pay  
19 individuals, let's say two, \$15 million over 90 days to meet  
20 with other high-level officials on its face suggests a more  
21 sinister interpretation.

22 MR. FELDMAN: Your Honor --

23 MS. BOYD: Well, your Honor --

24 THE COURT: Yes, someone else wanted to talk?

25 MR. FELDMAN: Your Honor, my name is Jeff Feldman.

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1 MS. BOYD: Plaintiffs knew Interamerican, knew its  
2 employees, and contracted for these services knowing all of  
3 that and agreeing to the payment terms and agreeing to use this  
4 particular consultant. So I don't think we can speak to  
5 anything beyond what was agreed to in the contract and what  
6 plaintiff had at its disposal at that time, which was public  
7 information.

8 THE COURT: Okay. I think counsel for the plaintiff  
9 was attempting to interrupt a moment ago.

10 Was that you, Mr. Korn?

11 MR. KORN: No, that was somebody else, Jeff Feldman, I  
12 think I heard.

13 MR. FELDMAN: Yes, that's right, your Honor. May I  
14 address the Court?

15 THE COURT: And you are whom?

16 MR. FELDMAN: I am David Rivera's counsel.

17 THE COURT: Okay.

18 MR. FELDMAN: Your Honor, thank you for allowing me to  
19 talk. I understand the questions the Court is asking and  
20 perhaps even why the Court is asking them. What I would tell  
21 you is that the contract that's at issue here was drafted by  
22 the plaintiff. I would invite the Court, once it gets the  
23 contract, to read it, because the questions to why this  
24 transaction was structured the way it was began with the  
25 plaintiff and the drafting of the contract as it was.

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1           And the questions that the Court asks about the  
2 dollars relative to the period of services legitimately raise  
3 the questions that you're asking. So what I'm suggesting,  
4 without getting into disclosure of attorney-client privilege,  
5 is that there's more to this story than what is on the face of  
6 the agreement. And I don't think that I can say much more than  
7 that right now, other than to say that the plaintiff had a  
8 reason for drafting the contract the way it did and for paying  
9 the amount of money that it paid and for the period of time  
10 that that contract covered. And the only thing I would ask the  
11 Court to do -- I obviously know a lot, and I'm asking the Court  
12 to keep an open mind and to resist the temptation of drawing a  
13 conclusion that Mr. Rivera and his company did anything wrong  
14 here.

15           The real question is why did the plaintiff, as a  
16 business entity, PDV Holdings -- or, sorry, PDV USA is a  
17 wholly-owned subsidiary of PDV Holdings, which is the holding  
18 company for Citgo. Why would PDV USA hire a consultant for a  
19 90-day period for \$50 million? Why?

20           And so that's where this question starts. And they're  
21 the ones, frankly, that the Court should be, I would suggest,  
22 respectfully, putting the question to. Who goes out and does a  
23 90-day agreement for \$50 million? Why would PDV USA, an  
24 affiliate of Citgo, find the need to hire somebody for \$50  
25 million over 90 days, and do it in the form of a contract that

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1 is amorphous at best? The fact that they drafted the agreement  
2 as amorphous as it is and put a confidentiality clause in that  
3 agreement so that at least Interamerican cannot disclose it  
4 potentially without being potentially in breach of it, why?  
5 Why draft an amorphous agreement for \$50 million over 90 days?  
6 They know the reason for that.

7 THE COURT: Okay, counsel.

8 MR. FELDMAN: Thank you, Judge.

9 THE COURT: Thank you. You're representing  
10 Mr. Rivera. Is Mr. Rivera himself a party in this case?

11 MR. FELDMAN: He is not.

12 MR. KORN: No.

13 THE COURT: All right. You should give your  
14 appearance to the court reporter afterwards so that the record  
15 is clear.

16 The issues that I raised with respect to the contract  
17 I raised with plaintiff's counsel initially as well as with  
18 defendant's counsel. And of course I have an open mind. I  
19 never decide anything until it's fully briefed on the facts and  
20 the law. And I told both parties that the issues with respect  
21 to what is truly at issue with respect to this contract are  
22 issues which will be explored if the motion to dismiss were  
23 denied and the case went forward. As I told both parties, this  
24 is something that both parties should carefully consider with  
25 respect to proceeding with the litigation.

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1           As to the confidentiality of the underlying agreement,  
2 the plaintiff said that the plaintiff would file an amended  
3 complaint, and I thought that the plaintiff undertook to attach  
4 the agreement to the amended complaint and to allege  
5 specifically how the plaintiff alleges that the agreement was  
6 violated.

7           So, of course, I keep an open mind, and I thought that  
8 I had raised the questions about the contract with both sides.  
9 And yes, I keep an open mind and I don't decide anything until  
10 it's briefed on the facts and the law. And as I've told both  
11 sides, they should obviously explore these issues in detail  
12 with their respective clients. And what are the services  
13 really being provided under this contract for this money,  
14 neither side at this point was prepared to detail that for me,  
15 so, of course, I can't reach any conclusions about that. It's  
16 important for both sides to carefully consider what effect that  
17 will have on the ultimate outcome of the litigation. Yes, I  
18 keep an open mind, and the parties should talk out these issues  
19 with their respective clients.

20           MR. KORN: Your Honor?

21           THE COURT: Is that Mr. Korn?

22           MR. KORN: It is, your Honor. Would it be permissible  
23 for me to make a couple of quick observations?

24           THE COURT: Yes, sure.

25           MR. KORN: The first, in response to the comments that

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1 were made both by Mr. Rivera's counsel and Interamerican's  
2 counsel -- and this is pled in our complaint and we discussed  
3 it in our letter, the services here and the contract that was  
4 really designed to provide services for the ultimate parent of  
5 PDV USA, which is PDVSA, the Venezuelan national oil company.  
6 And at the time of the contract, just to give additional  
7 context, PDVSA was controlled by the Maduro regime, and it's  
8 only since then that the Guaidó administration has, in 2019,  
9 been able to take control. And while these services and the  
10 communications -- and this would be fully pleaded and I think  
11 is pleaded -- were with PDVSA, the contract here was with the  
12 U.S. subsidiary, PDV USA, and it paid \$15 million -- and we  
13 could detail this more in the amended complaint to the extent  
14 that we can -- and got nothing in return. And that is a lot of  
15 money to be out in a contract like this. And I certainly am  
16 mindful of your Honor's comments and will discuss them with my  
17 client.

18 MR. FELDMAN: Your Honor, this is --

19 THE COURT: Mr. Korn was speaking. Go ahead.

20 MR. KORN: Thank you.

21 The second observation goes to the standing. I know  
22 your Honor challenged me when I said the defendants were trying  
23 to have it both ways. I think I heard counsel for the  
24 defendant say they want to hold PDV USA to the terms of the  
25 contract, and presumably that is a foreshadowing of a

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1 counterclaim against PDV USA, while at the same time saying  
2 that PDV USA does not have standing to pursue affirmative  
3 claims to recover the \$15 million that it paid. I don't see  
4 how that can work, and we will address that in the amended  
5 complaint, but the assignment here contemplated consent from  
6 the defendant Interamerican. It had a signature line for  
7 Interamerican, it specified their consent was being provided,  
8 and it never was.

9 So our position, and the reason that we proceeded on  
10 this basis, and it was certainly something that we flagged in  
11 the original complaint, because we knew that there was an  
12 assignment question, was that there was no assignment, there  
13 was no valid assignment and we have standing. But I don't  
14 think we get to both hold you to the original obligations as if  
15 you're still a party and nevertheless you can't sue us because  
16 you don't have standing.

17 THE COURT: Okay. I plainly can't decide any of these  
18 issues on the phone, all I intended to do was to raise them,  
19 air them, make sure that the parties are considering all of  
20 them, make sure that the plaintiff, when the plaintiff files an  
21 amended complaint, has carefully taken all of these issues into  
22 account so that the amended complaint may moot the defendant's  
23 desire to file a motion to dismiss and that both sides have  
24 considered all of the issues in the case. To reiterate, I  
25 don't decide anything until it's briefed on the facts and the

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1 law.

2 So amended complaint. How about October 23?  
3 Mr. Korn?

4 MR. KORN: That works for the plaintiff. Thank you,  
5 your Honor.

6 THE COURT: Okay. And please, in the amended  
7 complaint plead everything that you believe is necessary to  
8 meet all of the issues raised in the defendant's letter so that  
9 you give me the best complaint possible so that, if there is a  
10 motion to dismiss, you don't say in response to the motion to  
11 dismiss: If the complaint is insufficient, give us the  
12 opportunity to amend.

13 I appreciate that you have a right to amend after a  
14 first reasoned decision by me, but successive motions to  
15 dismiss are really a waste of all of your clients' money and  
16 expense and time. So please give me as complete a complaint as  
17 you can so that it may discourage a motion to dismiss, or if  
18 there is a motion to dismiss, that will be the dispositive  
19 pleading, which will either be granted or denied, even though,  
20 as I say, I appreciate that if there were a dismissal, under  
21 the current Second Circuit law you would have the opportunity  
22 to ask for leave to amend.

23 So plaintiff will file an amended complaint by  
24 October 23, defendant will move or answer by November 13.

25 MS. BOYD: Your Honor, I don't know if this is the



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1 time to request additional time for a responsive pleading or  
2 another motion to dismiss. There are, as identified by the  
3 Court, many issues here, and we think we would need additional  
4 time.

5 THE COURT: Well, I gave you three weeks to move or  
6 answer, from October 23 to November 13. I will give you  
7 another week, November 20. That's four weeks.

8 MS. BOYD: Much appreciated.

9 THE COURT: Sure. So defendant will move or answer by  
10 November 20, but no premotion conference is required. If a  
11 motion, plaintiff will respond by December 18, and reply by  
12 January 5.

13 If no motion, so if an answer, parties will submit a  
14 Rule~26(f) report by December 4.

15 Okay?

16 MS. BOYD: Your Honor --

17 MR. FELDMAN: Your Honor --

18 THE COURT: Whoa, whoa. I think first of all I heard  
19 Ms. Boyd.

20 MS. BOYD: Yes, sir. Just with the Court's  
21 indulgence, because counsel for plaintiff made a point that we  
22 really can't leave out there, this contract, when all is seen,  
23 has nothing to do with this parent company PDVSA. And our  
24 position on assignment is commensurate with New York law that  
25 consent was not required for enforcement but it would have been

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1 required under terms of performance. And with that, that's in  
2 our letter, we look forward to getting the amended complaint.

3 THE COURT: Okay. I know the parties have taken  
4 different positions on the issue of assignment and I will  
5 carefully review the amended complaint and any pleadings in  
6 response.

7 Okay.

8 MR. KORN: Thank you, your Honor.

9 THE COURT: Anything else?

10 MR. KORN: Not from the plaintiff.

11 MS. BOYD: No, your Honor, thank you.

12 THE COURT: Okay. Good to talk to you all. Thank you  
13 for your letters, thank you for participating in the  
14 conference. Please stay well, be safe. Bye now.

15 MR. KORN: Thank you, your Honor.

16 MS. BOYD: Thank you.

17 (Adjourned)